

U.S. Patent Application No. 10/681,352  
Response to Restriction Requirement dated March 12, 2007  
Reply to Office Action of February 26, 2007

### **REMARKS/ARGUMENTS**

At page 2 of the Office Action, the Examiner is requesting that the applicant elect from one of two groups as follows:

- I. Claims 25-26, drawn to a method for determining treatments for a cancer patient comprising unique steps for correlating specific sequence positions with a cancer treatment.
- II. Claims 27-28, drawn to a method for determining treatments for a cancer patient comprising unique steps of correlating specific sequence positions with a cancer treatment.

To be responsive, the applicants elect, with traverse, Group I, claims 25-26, for examination.

For the following reasons, the restriction requirement is respectfully traversed.

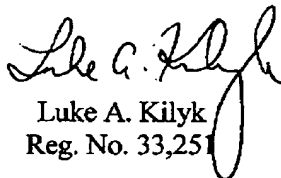
The applicants respectfully point out to the Examiner that the scope of claims 27 and 28 fall within claims 25 and 26 and, therefore, the restriction requirement is improper and therefore the inventions are not mutually exclusive, and clearly would not involve a burden to the Examiner to search all claims at this time. The applicants also respectfully point out to the Examiner that by examining claims 25 and 26, the Examiner will necessarily be examining at the same time, the subject matter of claims 27 and 28. Also, the class/subclass for each claim is the same.

It is also respectfully noted that in the previous Office Actions, clearly, claims 25-28 were within the scope of the elected invention, whereby the Examiner indicated that the subject matter would be grouped together and posed no burden to the Examiner. Under M.P.E.P. § 803, if there is no serious burden in the examination of all of the claims even if the claims are directed to separate inventions, the Examiner must examine all claims at this time. It would appear that § 803 applies to the current situation in view of the above comments and, therefore, the restriction requirement should be withdrawn and all claims should be examined at this time. At a minimum, the Examiner should re-group these non-elected claims upon the allowability of the Group I subject matter.

U.S. Patent Application No. 10/681,352  
Response to Restriction Requirement dated March 12, 2007  
Reply to Office Action of February 26, 2007

If there are any fees due in connection with the filing of this response, please charge the fees to Deposit Account No. 50-0925. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such extension is requested and should also be charged to said Deposit Account.

Respectfully submitted,

  
Luke A. Kilyk  
Reg. No. 33,251

Attorney Docket No. 3190-044  
KILYK & BOWERSOX, P.L.L.C.  
400 Holiday Court, Suite 102  
Warrenton, VA 20186  
Tel.: (540) 428-1701  
Fax: (540) 428-1720